

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN

JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

WUD 125547

WUI 620976

RECORDATION NO. 9807 Filed 1425

OCT 30 1978 -4 10 PM

INTERSTATE COMMERCE COMMISSION

COUNSEL
ROSWELL L. GILPATRIC
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

CARLYLE E. MAW
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901

CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C. 2

REC. NO. 9807
9807-A
OCT 30, 1978
4:10 PM

RECORDATION NO. 9807 A Filed 1425

OCT 30 1978 -4 10 PM

INTERSTATE COMMERCE COMMISSION

October 30, 1978

Louisville and Nashville Railroad Company

Conditional Sale Financing

Dated as of August 15, 1978

9-5/8% Conditional Sale Indebtedness Due 1994

Dear Mr. Homme:

Pursuant to the applicable provisions of Public Law 95-473 corresponding to former Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Louisville and Nashville Railroad Company for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of August 15, 1978, among Louisville and Nashville Railroad Company and Fruit Growers Express Company and Pullman Incorporated (Pullman Standard Division); and

(b) Agreement and Assignment dated as of August 15, 1978, between each of Fruit Growers Express Company and Pullman Incorporated (Pullman Standard Division) and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Assignee-Agent:

Mercantile-Safe Deposit and
Trust Company,
P. O. Box 2258,
Baltimore, Maryland 21203

(2) Builders-Vendors:

Fruit Growers Express Company,
1101 Vermont Avenue, N.W.,
Washington, D. C. 20005

(3) Pullman Incorporated,
(Pullman Standard Division)
200 South Michigan Avenue,
Chicago, Illinois 60604

(3) Railroad:

Louisville and Nashville
Railroad Company,
908 West Broadway,
Louisville, Kentucky 40232

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Builders-Vendors and the Railroad.

The equipment covered by the aforementioned documents consists of the following:

43 60' 100-ton CUF Box Cars bearing identifying numbers of the Railroad L&N 105620 -- LN 105662, both inclusive with an AAR Mechanical Designation of XP; and

100 52'6" 100-ton CUF Box Cars bearing identifying numbers of the Railroad L&N 403000 -- L&N 403099, both inclusive with an AAR Mechanical Designation of XM.

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Steven M. Berzin
As Agent for Louisville
and Nashville Railroad
Company

H. G. Homme, Esq.,
Acting Secretary,
Interstate Commerce Commission,
Washington, D. C. 10423

Encls.

79A

BY HAND

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 660-1111

TELEX

100-1111

100-1111

100-1111

RECORDATION NO. 9807

8-303A193

OCT 30 1978

OCT 30 1978 - 4 00 PM

INTERSTATE COMMERCE COMMISSION

CC Washington, D. C.

RECORDATION NO. 9807 Filed 1425

OCT 30 1978 - 4 00 PM
INTERSTATE COMMERCE COMMISSION

October 30, 1978

Louisville and Nashville Railroad Company

Conditional Sale Financing

Dated as of August 15, 1978

9-5/8% Conditional Sale Indebtedness Due 1994

Dear Mr. Homme:

Pursuant to the applicable provisions of Public Law 95-473 corresponding to former Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Louisville and Nashville Railroad Company for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of August 15, 1978, among Louisville and Nashville Railroad Company and Fruit Growers Express Company and Pullman Incorporated (Pullman Standard Division); and

(b) Agreement and Assignment dated as of August 15, 1978, between each of Fruit Growers Express Company and Pullman Incorporated (Pullman Standard Division) and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

Handwritten signature: Charles J. [illegible]

RECEIVED

OCT 30 3 54 PM '78

I.C.C. OPERATIONS BR

(1) Assignee-Agent:

Mercantile-Safe Deposit and
Trust Company,
P. O. Box 2258, 17
Baltimore, Maryland 21203

(2) Builders-Vendors: 50

Fruit Growers Express Company,
1101 Vermont Avenue, N.W.,
Washington, D. C. 20005

Pullman Incorporated,
(Pullman Standard Division)
200 South Michigan Avenue,
Chicago, Illinois 60604

(3) Railroad:

Louisville and Nashville
Railroad Company,
908 West Broadway,
Louisville, Kentucky 40232

Please file and record the documents referred to in
this letter and cross-index them under the names of the Assignee-
Agent, the Builders-Vendors and the Railroad.

The equipment covered by the aforementioned documents
consists of the following:

43 60' 100-ton CUP Box Cars bearing identifying
numbers of the Railroad L&N 105620 -- LN 105662, both
inclusive with an AAR Mechanical Designation of XP; and

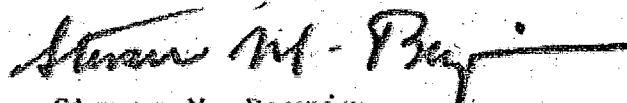
100 52'6" 100-ton CUP Box Cars bearing identifying
numbers of the Railroad L&N 403000 -- L&N 403099, both
inclusive with an AAR Mechanical Designation of XM.

There is also enclosed a check for \$50 payable to
the Interstate Commerce Commission, representing the fee for
recording the Conditional Sale Agreement and related Agreement
and Assignment (together constituting one document).

17 June 1961

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Steven M. Berzin
As Agent for Louisville
and Nashville Railroad
Company

H. G. Honne, Esq.,
Acting Secretary,
Interstate Commerce Commission,
Washington, D. C. 10423

Encls.

79A

BY HAND

Interstate Commerce Commission
Washington, D.C. 20423

10/30/78

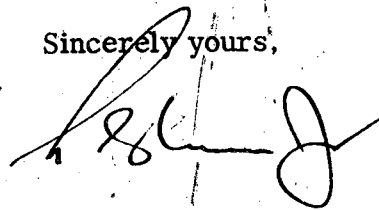
OFFICE OF THE SECRETARY

Steven M. Berzin
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 10/30/78 at 4:00pm
and assigned recordation number(s) 9807 & 9807-A

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

9807-A
RECORDATION NO. Filed 1425

OCT 30 1978 -4 40 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of August 15, 1978

between each of

FRUIT GROWERS EXPRESS COMPANY and

PULLMAN INCORPORATED
(Pullman Standard Division),
the Builders

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent

AGREEMENT AND ASSIGNMENT

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. Assignments by Each Builder to Assignee; No Recourse	1
SECTION 2. Each Builder Agrees to Construct Equipment and Warrant Title thereto; Delivery; No Delivery Under CSA Until Filing . . .	3
SECTION 3. Indemnification of Assignee; Patent Indemnification	3
SECTION 4. Conditions to Obligation of Assignee to Pay Each Builder	5
SECTION 5. Further Assignments by Assignee	9
SECTION 6. Representation and Warranty and Agree- ment of Each Builder	9
SECTION 7. Law Governing	10
SECTION 8. Rights and Obligations of the Builder . . .	10
SECTION 9. Notice of Assignment to Railroad	10
SECTION 10. Counterparts	11
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT	

AGREEMENT AND ASSIGNMENT, dated as of August 15, 1978, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, being hereinafter called the "Assignee"), and each of Fruit Growers Express Company and Pullman Incorporated (Pullman Standard Division) (individually the "Builder" and collectively the "Builders").

WHEREAS, the Builders and Louisville and Nashville Railroad Company (the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being herein after sometimes called "such Builder's Equipment" or "its Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1.00 and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to such Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver such Builder's Equipment and the right to

receive the payments specified in the third paragraph of Article 3 thereof, and in subparagraph (a) of the fourth paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to such Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of such Builder to the Railroad with respect to such Builder's Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. Each Builder hereby authorizes the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the CSA

and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. Neither Builder will deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 19 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from the Railroad or special counsel for the Assignee that such filings have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, with the exception of amounts payable to it pursuant to subparagraph (a) of the fourth paragraph of Article 4 of the CSA (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of such Builder or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group and to each Builder which shall submit a supplemental invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances other than those created by the CSA and the rights of the Assignee under this Assignment and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal, valid and binding instrument enforceable against such Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has the valid and perfected security title in the units of the Equipment in such Group, and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and

other encumbrances other than those created by the CSA and other than the rights of such Builder excluded from this Assignment, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the CSA and this Assignment have been duly filed in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and substance to said counsel and that said counsel believe that the Assignee and Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Agreement by parties thereto other than the Railroad) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as conducted on the date thereof;

(f) an opinion of counsel for each Builder, dated as of such Closing Date, to the effect that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted,

(ii) the CSA has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon such Builder and (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by such Builder pursuant to this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and other than the rights of the Assignee under this Assignment) arising from, through or under such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, to the best of his knowledge and belief, (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, and (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment;

(h) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by any Builder as per-

mitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c), (g)(i) and (h) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for a Builder as to authorization, execution and delivery by such Builder of the documents executed by such Builder and as to title to the Equipment of such Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for such Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privi-

leges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto; (b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the receipt by such Builder of the purchase price for its Equipment, except any portion thereof to be paid pursuant to any supplemental invoice, and upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be

enforceable against only the specific Builder giving rise to such right or obligation and its successors as herein provided.

SECTION 9. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 10. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FRUIT GROWERS EXPRESS COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

PULLMAN INCORPORATED
(Pullman Standard Division)

by

Vice President-Freight Unit

[Corporate Seal]

Attest:

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent,

by

[Corporate Seal]

Assistant Vice President

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

LOUISVILLE AND NASHVILLE RAILROAD COMPANY hereby
acknowledges due notice of and consents to the assignment
made by the foregoing Agreement and Assignment as of
August 15, 1978.

LOUISVILLE AND NASHVILLE RAILROAD
COMPANY,

by 

Assistant Vice President

STATE OF ,)
) ss.:
COUNTY OF ,)

On this day of September 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of September 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF MARYLAND,)
) **ss.:**
CITY OF BALTIMORE,)

On this day of September 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires